# ELECTION SECURITY: DETERRING FOREIGN MISINFORMATION

by
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**Abstract**

Concern surrounding foreign misinformation campaigns grew following the Russian election interference in the 2016 Presidential election. The spread of false information has a number of measurable harms, and in the space of election, makes it impossible for citizens to make an informed decision. As reports of similar misinformation spreading ahead of the 2020 election, and with an ever-increasing share of the American public interacting with false information online, the need for policy solutions has grown. Multiple proposed policies have circulated, from requiring online advertisements to state where funding has originated from to repealing Section 230 of the Communications Decency Act. This memorandum examines one of those policies, the Defending Elections from Threats by Establishing Redlines Act (DETER Act). The DETER Act utilizes economic sanctions directed at Russian individuals and institutions that participate in election interference operations. The DETER Act is analyzed for its effectiveness, its costs, and its political saliency. The Act is determined to meet the requirements of effective sanctions, its benefits outweigh its costs, and the political will to move the DETER Act through congress is there if the bill can make it out of committee.

**Key Words:** Elections, misinformation, fake news, deterrence, sanctions

**Table of Contents**

Index of Tables

Index of Figures

**TO:** Senator Ben Sasse

**FROM:** Matthew A. Ellis

**DATE:** September 2, 2020

**Subject:** Combating Fake News: Minimizing the Effect of Foreign Misinformation

## I. Action Forcing Event

On September 2, 2020, NBC News reported that the Department of Homeland Security withheld a bulletin from being distributed to law enforcement agencies due to concerns over its evidence standards.[1] Written a few weeks before the Senate Select Committee on Intelligence received their final report on foreign interference during the 2016 presidential election[2], the notice warned that foreign agents might promulgate falsehoods about presidential candidate Joe Biden leading up to the 2020 presidential election.[3]

## II. Statement of the Problem

Misinformation, while not a new phenomena, has become a pressing 21st century problem. Both the CATO institute[4] and the Brookings Institute[5] state that the harms to society by false news are real. One of the main reasons the manipulation of information is detrimental to society is that it creates imperfect information in a citizenry. From Thomas Jefferson[6] to Barack Obama,[7] many have stated the need for a well-informed public in order for democratic society to function. This section will explain why misinformation *is* a problem that needs to be faced. A few prime examples of foreign misinformation adequately showcase that false news,

[1] Ken Dilanian, "DHS delayed intel report on foreign powers trying to raise doubts about Biden, Trump health." *NBC News*, September 2, 2020.
[2] Dustin Volz and Warren P. Strobel, " Senate Panel's Russia Probe Found Counterintelligence Risks in Trump's 2016 Campaign," *Wall Street Journal*, August 18, 2020.
[3] Josh Margolin, Lucian Bruggeman, Will Steakin, and Jonathan Karl, "DHS withheld July intelligence bulletin calling out Russian attack on Biden's mental health," *ABC News*, September 2, 2020.
[4] Matthew Feeney, "Combating COVID-19 Misinformation with Disassociation," *Cato Institute*, April 1, 2020.
[5] Robyn Caplan, "COVID-19 misinformation is a crisis of content mediation," *Brookings Institute: Tech Stream*, May 7, 2020.
[6] Thomas Jefferson, Letter to Richard Price, January 8, 1789
[7] Mike Murphy, "Read the complete text of Obama's speech at the Democratic National Convention," *MarketWatch*, August 19, 2020.

propagated by a foreign country, creates a real harm for the United States. The first case is Russia's use of information manipulation during the annexation of Crimea and its subsequent use in sowing discord in Texas during the Jade Helm military training exercise. The 2016 presidential election saw the culmination of these efforts in an information warfare campaign meant to influence the outcome of that election. The harms caused by foreign misinformation surrounding the COVID-19 pandemic provide an example of the dangers of domestic misinformation. Interspersed in these cases are reasons why misinformation is *more* of a problem now than it has been in the past.

First, disinformation and misinformation must be defined. Disinformation as defined by the European Commission is "verifiably false or misleading information that is created, presented, and disseminated for economic gain or to intentionally deceive the public, and may cause public harm."[8] Disinformation is explicitly intended to create a detrimental effect in the communication networks it works its way through. Misinformation, referred to as a "mind-virus" by some sources,[9] is sometimes used synonymously with disinformation though its use has been more widespread and as such its definition has varied substantially. Misinformation has been defined as false information spread by individuals believing the information to be true[10], or false information knowingly or unknowingly spread,[11] and that which is not necessarily meant to cause harm.[12] It is evident from these varying definitions that there is some overlap in the two concepts. Calder Walton of the Harvard Kennedy School states that, "misinformation is false information that a government officially and openly disseminates, whereas disinformation

[8] Jason Pielemeier, "Disentangling Disinformation: What Makes Regulating Disinformation So Difficult?" *Utah Law Review*, 2020.
[9] Amanda B. Cronkhite, Wenshuo Zhang, and Leslie Caughell, "#FakeNew in #NatSec: Handling Misinformation," *Parameters: U.S. Army War College*," Spring 2020.
[10] Ibid
[11] Ghazal Aghagoli, Emily J. Siff, Anastatia C. Tillman, and Edward R. Feller, "COVID-19: Misinformation Can Kill," *Rhode Island Medical Journal*, June 2020.
[12] Christina Nemr and William Gangware, "Weapons of Mass Distraction: Foreign State-Sponsored Disinformation in the Digital Age," *Park Advisors*, 2019.

is false information that is covertly disseminated."[13] The term "fake news" is often referred to interchangeably with both disinformation and misinformation in some literature, but is has been defined separately as "news articles that are intentionally and verifiably false, and could mislead readers."[14] Propaganda has also been linked to disinformation and misinformation. Etienne Brown, quoting Randal Marlin, defines propaganda as, "the organized attempt, through communication, to affect belief or action or inculcate attitudes in a large audience in ways that circumvent an individual's adequately information, rational, reflective judgment."[15] These definitions all seem to describe the same phenomena with minor differences; however, the problem discussed herein will primarily be misinformation, spread by a foreign entity, with the understanding that it contains some aspects of disinformation, fake news, and propaganda.

Misinformation became a subject of global scrutiny in 2016 after the Russia's concerted efforts to influence the United States presidential election. Prior to this however, Russia deployed a comprehensive disinformation campaign during its annexation of Crimea in 2014. Russia Today, now known simply as RT, Russia's first 24-hour news channel, promulgated conspiracy theories and promoted anti-EU positions, melding fact and fiction, influencing the sentiments of Russians, and also European citizens.[16] In a report by the Institute of Russia, a New York based think tank, authors Peter Pomerantsev and Michael Weiss quote the Lithuanian Foreign Minster who stated, "Russia Today's [RT] propaganda machine is no less destructive than military marching in Crimea."[17] In one widely cited example, a fake twitter account spread conspiracies of Ukraine being involved in the downing of Malaysian Airlines flight MH17. RT

[13] Calder Walton, "Spies, Election Meddling, and Disinformation: Past and Present," *Brown Journal of World Affairs*, Fall/Winter 2019.
[14] Hunt Allcott and Matthew Gentzkow, "Social Media and Fake News in the 2016 Election," *Journal of Economic Perspectives*, Spring 2017.
[15] Etienne Brown, "Propaganda, Misinformaton, and the Epistemic Value of Democracy," *Critical Review: A Journal of Politics and Society*, February 15, 2019.
[16] Ibid.
[17] Peter Pomerantsev and Michael Weiss, "The Menace of Unreality: How the Kremlin Weaponizes Information, Culture and Money," Institute of Modern Russia, *The Interpreter*, 2014

picked up the story and continued to spread the allegations even after they had been disproved.[18] Geoffrey Cain of *The New Republic* wrote that Russia's disinformation warfare in Ukraine was a "testing ground" for further operations.[19] Russia took what it learned from its Crimean information warfare and applied it to United States.

In 2015, Russian social media activity helped sow distrust against the United States Federal Government in Texas. A routine military training exercise known as Jade Helm 15 was planned across multiple states, one of which was Texas. Concerned citizens began circulating and paying attention to conspiracy theories that hypothesized that the training exercise was setting the stage for implementing martial law, and lead by then President Barack Obama.[20] These conspiracy theories were picked up by media personality Alex Jones, and eventually Texas Governor Greg Abbott placed the Texas National Guard on alert, directing them to monitor the military exercise.[21] Former Director of the National Security Agency and the CIA, Michael Hayden, stated that, "Russian bots, Russian trolls, combining with the American alt-right media, convinced a nontrivial portion of the Texas population, that it was an attempt by the Obama administration to round up political opponents."[22] Hayden went on to assert that the Russians viewed their interference in Texas, and the widespread distrust in Government that they sowed, as a success, and then turned their eye to election Interference.[23]

In the article "Social Media Fake News in the 2016 Election," authors Hunt Allcott and Matthew Gentzkow discuss how misinformation was widely shared on Facebook during the 2016 presidential election. In a database that the two scholars compiled on misinformation

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[18] Ibid.
[19] Geoffrey Cain, "Ukraine's War on Russian Disinformation is a Lesson for America," *The New Republic*, March 29, 2019.
[20] Dan Lamonthe, "Remember Jade Helm 15, the controversial military exercise? It's over," *The Washington Post,* September 14, 2015.
[21] Amy Davidson Sorkin, "Unclear Dangers," *The New Yorker*, May 10, 2015.
[22] *After Truth: Disinformation and the Cost of Fake News*, Directed by Andrew Rossi, HBO Documentary Film, Abstract Production, 2020.
[23] Jacqueline Thomsen, "Ex-CIA chief says Russian bots fueled Jade Helm conspiracy theories," *The Hill*, May 3, 2018.

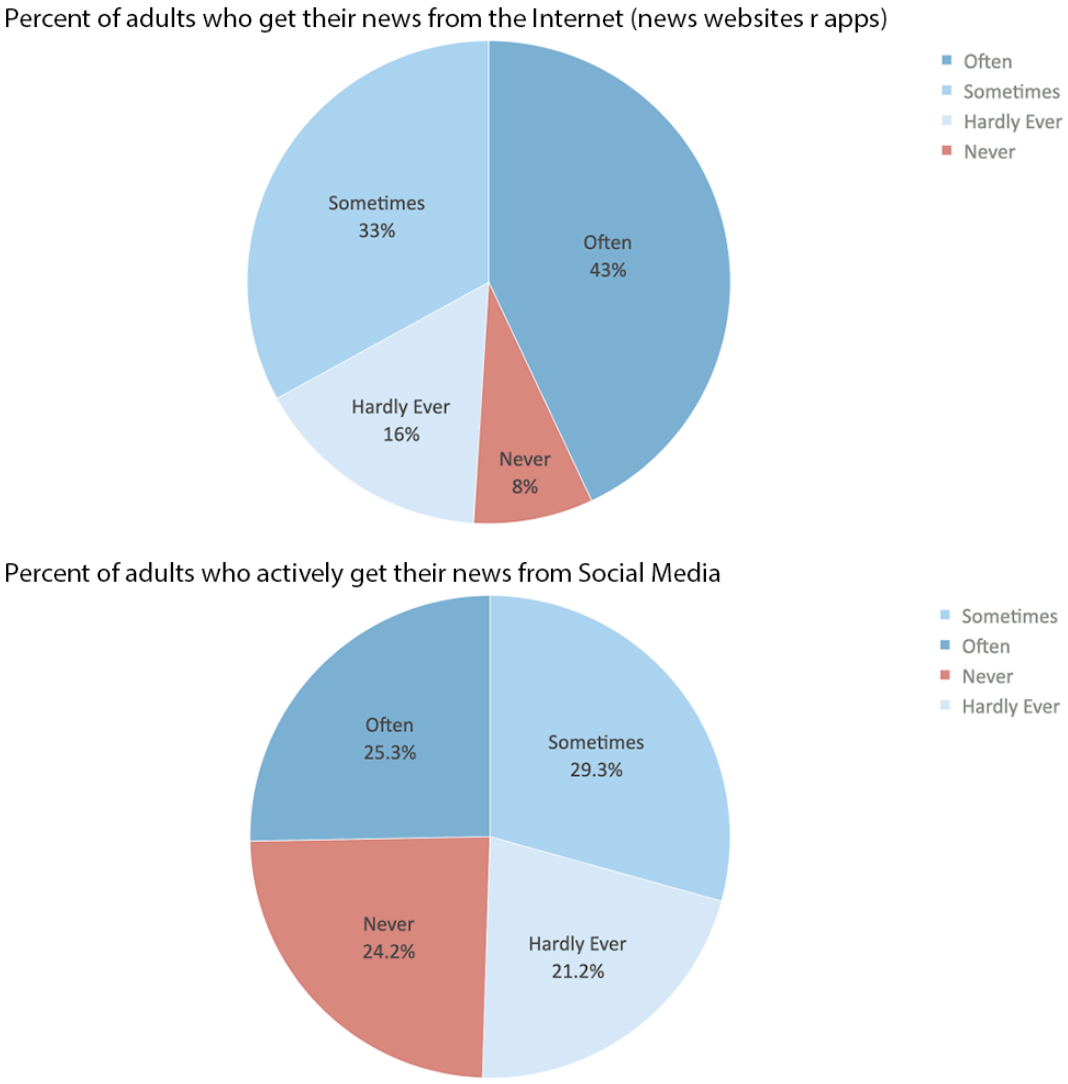
during the election, they found that fake stories were shared a total of 37.6 million times, which corresponds to some 760 million instances of a user interacting with the false information.[24] They also document that Social Media platforms are the largest driver of visitors to sites that spread misinformation.[25] Many sources document that the Internet Research Agency (IRA), which ramped up its operations during the Crimea annexation, wages a sophisticated disinformation campaign against U.S. voters. The Senate Select Committee on Intelligence came to the same conclusion and added that Russia's election interfering "was part of a broader, sophisticated, and ongoing information warfare campaign designed to sow discord in American Politics and Society."[26]

In *Cyberwar: How Russian Hackers and Trolls Helped Elect a* President, author Kathleen Hall Jamieson Director of the Annenberg Public Policy Center at the University of Pennsylvania documented the extent to which the Russian election meddling effected the outcome of the election. Jamieson argued that Russian agents who undertook a misinformation campaign were indeed successful in influencing the outcome of the election. She traced the way Russian hacking and the release of DNC emails that followed, shifted media's coverage, and that Russian information manipulation spread conspiracy theories that shifted it in to a negative slant toward Democratic candidate Hilary Clinton.[27] That the vast majority of information manipulation took place on the Internet points to the novelty of modern misinformation.

[24] Hunt Alcott and Matthew Gentzkow, "Social Media Fake News in the 2016 Election," *Journal of Economic Perspectives*, 2017.
[25] Ibid.
[26] Senate Select Committee on Intelligence, "Report on Russian Active Measures Campaigns and Interference in the 2016 U.S. Election," Vol 2., 2020.
[27] Kathleen Hall Jamieson, "Cyberwar: How Russian Hackers and Trolls Helped Elect a President," Oxford University Press, 2018.

In 2019, nearly three-fourths of United States adults actively get their news on social media platforms to some degree; while over 90 percent acquire some their news from the Internet.[28]

**Figure 1. Internet usage for acquiring news among adults.**




Source: Data sourced from Pew Research Center's American Trends Panel Wave 45, 2019; created using Plotly.

We can see from the graphs in Figure 1 that the share of adults who do not find some or all of their news from either social media websites or the Internet is far smaller than those that do. The Internet's propensity to open lines of communications across distances also opened up U.S.

[28] "American Trends Panel Wave 45", Pew Research Center, Washington, D.C., 2019.

citizens to foreign influence. One of the defining features of United States foreign relations has been its relative security over its history; The U.S. has had very few enemy nations in close proximity to its citizens.[29] John P. Carlin, former Assistant Attorney General for National Security, wrote in his book *Dawn of the Code War* that the openness of the Internet gave extremists and terrorists a way to reach into our homes and talk directly with our children and us.[30] It seems that never before have we been so open to an enemy. Carlin wrote that, "Protecting our digital lives is no longer just about ensuring we don't lose our family pictures—it's about protecting our values, our health, our culture, and our democracy."[31] This would include protecting our elections. There are concerns that artificial intelligence technologies will exacerbate this problem by increasing the ease of selected message targeting.[32]

John P. Carlin also documented that Russia was not the only foreign entity that was capable and willing to employ misinformation tactics. Carlin wrote that in 2013 a Syrian group known as the Syrian Electronic Army (SEA), known for cyber terrorism and misinformation campaigns to promote Basar Al Assad, had hacked into the Associated Press' twitter feed and sent out a message to upwards of two million followers that two explosions had occurred at the White House and then President Barack Obama had been injured.[33] The disseminating of this fake information over Twitter caused a very real drop in the stock market, erasing billions of dollars in the span of a minute.[34] While the stock market rebounded quickly, it took until 2015 for members of the SEA to be indicted and extradited to the US. [35]

[29] Andrew Preston, "American Foreign Relations: A Very Short Introductions," Oxford University Press, May 1, 2019.
[30] John P. Carlin, "Dawn of the Code War," *PublicAffairs*, October 2018.
[31] ibid
[32] Alina Polyakova, "Weapons of the weak: Russia and AI-driven asymmetric warfare," *Brookings Institute*, November 15, 2018.
[33] Carlin, "Dawn of the Code War," 2018
[34] Ibid
[35] Ibid

A recent article by Joshua Yaffa in the New Yorker argued that domestic misinformation is a more pernicious problem than foreign information manipulation. Yaffa wrote that, "when it comes to COVID-19, the apparent result of the combined disinformation campaign of Trump and Fox News has been devastating."[36] The World Health Organization announced that the while the world was facing the global pandemic, it was also facing an "infodemic."[37] Online conspiracies purporting that 5G cellphone towers were responsible for spreading COVID-19 caused very real property damage in the United Kingdom.[38] At least one death during the pandemic resulted from a false belief that Chloroquine might help treat the virus,[39] and there have been reports that 30 calls about ingesting harmful substances were made to the New York City poison control, more than double the calls the department receives in any given year, after President Trump made comments that bleach may help treat COVID-19.[40] Molly Montgomery, a nonresident fellow at the Brookings Institute and former U.S. Foreign Service officer, wrote that, "In April 2020 alone, Facebook applied warning labels to more than 50 million pieces of content that contained misinformation regarding the COVID-19 pandemic."[41] However, domestic misinformation may be exacerbated by foreign entities spreading false information. The Associated Press reported that U.S. officials identified a clear link between sites that were spreading misinformation about the COVID-19 and Russian Intelligence agents.[42] Montgomery explains that false information is a wicked problem, that it is a problem that is, "highly complex,

[36] Joshua Yaffa, "Believe It or Not," *The New Yorker*, September 14, 2020.
[37] "Novel Coronavirus(2019-nCoV: Situation Report – 13," *World Health Organization*, February 2, 2020.
[38] Adam Satariano and Davey Alba, "Burning Cell Towers, Out of Baseless Fear They Spread the Virus," *New York Times,* April 11, 2020.
[39] Theresa Waldrop, Dave Alsup, and Elliot C. McLaughlin, "Fearing Coronavirus, Arizona Man Dies After Taking a Form of Chloroquine Used to Treat Aquariums," *CNN*, March 25, 2020.
[40] Nicholas Reimann, "Some Americans Are Tragically Still Drinking Bleach As A Coronavirus 'Cure,'" *Forbes*, August 24, 2020
[41] Molly Montgomery, "Disinformation as a Wicked Problem: Why We Need Co-Regulatory Frameworks," *Brookings Institute*, August 2020.
[42] Eric Tucker, "U.S. officials: Russia behind spread of virus disinformation," *The Associated Press*, July 28, 2020.

interdependent, and unstable – and can only be mitigated, managed, or minimized, not solved."[43]

## III. Historical Context

In early January 2017, just days before Donald Trump was to take office, the news website *BuzzFeed* published a series of memos, known as the Steele Dossier, which contained unconfirmed allegations surrounding the President-elect and Russia.[44] Soon afterword the President-elect tweeted, "FAKE NEWS – A TOTAL POLITICAL WITCH HUNT."[45] While this brought modern misinformation to new heights of notoriety, there have been many past Presidents who have complained of false information being propagated. George Washington complained of newspaper editors "stuffing their papers with scurrility and nonsensical declamation."[46] Woodrow Wilson railed against the press when they published false stories about his daughters' social life.[47] Ronald Reagan complained about "new speak," what he called falsehoods, in the press as governor of California.[48] Misinformation is not a new political phenomenon.

The evolution of misinformation follows closely that of the evolution of media in the United States. Misinformation has often waxed and waned, though it recently has risen again to new heights. This is due in part to the changing structure of how the American people acquire their news. The media ecosystem is often how misinformation achieves its wide spread, more so now that that ecosystem has extended to the Internet. This means that misinformation and the way the people get their news are intrinsically linked. This section will delve into the history of this problem as well as give an explanation as to how media and misinformation are related. It will also document in more detail the threat foreign misinformation played in the 2016

[43] Montgomery, "Disinformation as a Wicked," 2020
[44] Scott Shane, Adam Goldman, and Matthew Rosenberg, "Trump Received Unsubstantiated Report That Russia Had Damaging Information About Him," *New York Times*, Jan 10, 2017.
[45] Ibid
[46] Harold Holzer, "The Presidents vs. The Press," Dutton Press, 2020, page 4.
[47] Ibid, page 131.
[48] Dave McNary, "Reagan sees 1984 "newspeak" in DB," *Daily Bruin*, 1972.

presidential election and beyond. This section will also provide the background of various policies and tools have been proposed to try and ameliorate foreign misinformation in the past, along with comparisons of how other countries and regions are dealing with the problem currently.

Misinformation has its historical roots in the practice known as "yellow journalism." Craig Carey of the University of Southern Mississippi argued that yellow journalism, exaggerated news, spread quickly in the late 19th century due to increases in telegraph usage[49] and others have argued that this type of reporting may have helped push the United States in to war with Spain in 1898.[50] However, increased attention to sensational reporting lead to increased criticism and calls for oversight.[51] After corporate fears of increased regulation by the government rose during the 1940s, ethical codes began to be adopted by newspaper associations in the early 20th century in an attempt to lessen the call for reform.[52] Criticism over the commercialized nature of the press led more publishers to realize that they would benefit from separating the reporting from the "commercial imperatives if they wished to retain legitimacy, stave off government intervention, and continue to reap commercial rewards."[53] Victor Pickard wrote in *Democracy without Journalism* that this change became a method of "soft self-regulation."[54] Yochai Benkler et al wrote in *Network Propaganda: Manipulation, Disinformation, and Radicalization in American Politics,* that this professionalization led to a sense of generally accepted notions about reality in the press and thus in the population.[55] This professionalism and the barriers between the commercial and publishing side of newspapers

[49] Craig Carey, "Breaking the news: Telegraphy and Yellow Journalism in the Spanish-American War," *American Periodicals,* 2016.
[50] Herold Holzer, "The Presidents Vs The Press," 2020.
[51] Victor Pickard, "Democracy without Journalism." page 22.
[52] Alfred G. Hill, "The Practice of the Kansas Code of Ethics for Newspapers," *The Annals of the American Academy of Political and Social Science*, 1922.
[53] Victor Pickard, "Democracy without Journalism." page 31.
[54] Ibid
[55] Yochai Benkler, Robert Faris, Hal Roberts, *Network Propaganda: Manipulation, Disinformation, and Radicalization in American Politics,* Oxford University Press, 2018.

seems to have reduced the amount of yellow journalism and misinformation in the later half of the 20th century.

The newspaper industry, and its generally accepted notions, were imperiled however by the rise of the Internet and changes in media ownership. In 2005 Ken Auletta wrote in *The New Yorker* that, "there is something almost prehistoric about using expensive newsprint and elaborate delivery systems, to homes and newsstands, in the age of the Internet."[56] Newspapers, especially local papers, declined significantly in the early 21st century. The Pew Research Center found that in 2000, classified ad revenue for newspapers had reached a high of approximately $19.6 million and by 2008 had fallen to nearly half that amount.[57] Pew also reported that overall newspaper ad revenue declined by $23.4 billion from 2005 to 2010, down from a high of $49.4 billion.[58] This steep decline in newspaper revenue was followed by a decline in journalists as newspapers tried to cut costs.[59]

This decline in the newspaper industry also coincided with a growing consolidation of news corporations. Pickard wrote that even new online media companies such as *Vox, BuzzFeed, the Huffington Post,* and *Vice* were still owned, in part or wholly, by the larger media companies like AOL and Disney.[60] Pickard quoted David Simon, a former *Baltimore Sun* reporter, who stated that this new type of online media, owned by the old media, "leaches [its] reporting from mainstream news publications, whereupon aggregating websites and bloggers contribute little more than repetition, commentary, and froth."[61] Pickard wrote that in this media ecosystem, commercialization incentivize the media companies, newspapers, television stations,

[56] Ken Auletta, "Fault Line: Can The Los Angeles Times Survive Its Owners?" *The New Yorker,* October 3, 2005.
[57] Sydney Jones, "Online Classifieds," *Pew Research Center*, May 22, 2009
[58] "Newspapers Fact Sheet," *Pew Research Center*, July 9, 2019
[59] Victor Pickard, "Democracy without Journalism." page 31.
[60] Victor Pickard, "Democracy without Journalism." Page 44.
[61] Victor Pickard, "Democracy without Journalism." Page 41.

and online platforms, to churn out stories that garner attention and are cheap to produce.[62] He wrote that, "pundits and panels of experts can simply discuss the President's latest tweets" and that, "this kind of superficial coverage is irresistible for profit-driven commercial news media but detrimental to democratic discourse."[63]

One policy response to this aspect of misinformation, a lack of reliable news, has often been to suggest a public media option. In 2009, when the newspaper crises was in full focus due to the extreme job losses coming about from the Great Recession, the U.S. Senate Commerce Committee held a hearing about that to do about the future of journalism.[64] John Kerry argued that since the government oversaw the, "licensing of broadcasts," and the "regulatory oversight of cable, satellite, and other issues with respect to communication," that the government did have the means and authority to protect and regulate the newspaper industry.[65] However, there has been some scholarship that shows that the United States is an outlier when it comes to lacking a robust public media. Citizens in Britain and some European countries enjoy a better-funded public media system,[66] and in return their populace is generally more informed.[67] Figure 2 shows the various per capita amounts that the various democracies spend on public media. It can be seen that the United States is outspent by all countries represented. The only comparable country is New Zealand, which per capita outspends the U.S. seven times over on public media. Benson, Powers, and Neff write that the U.S. public media broadcasting system relies in large part on wealthy donors, and because of this often skews content.[68]

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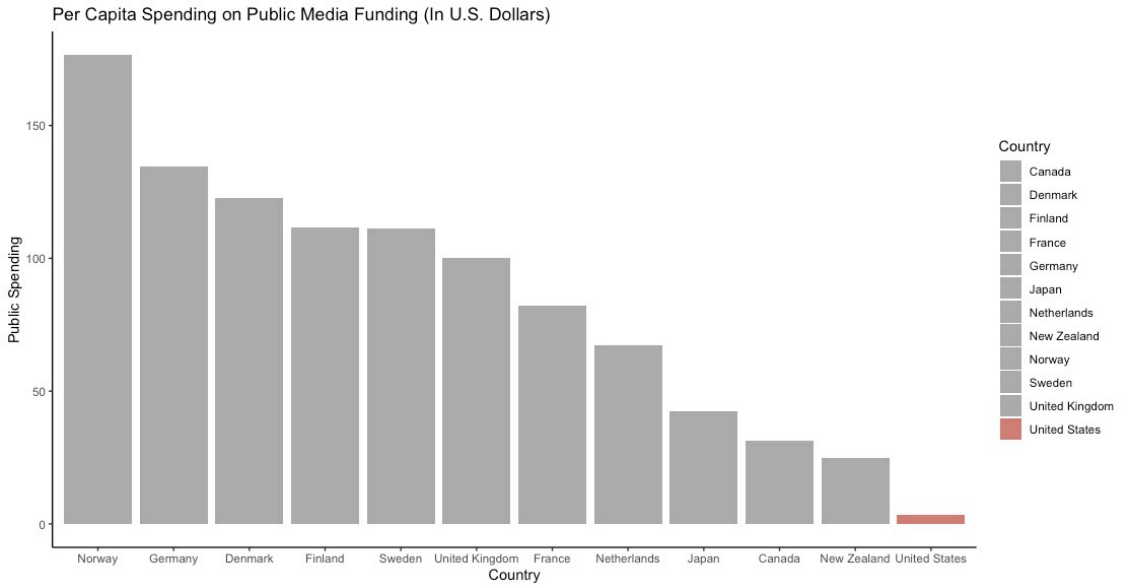
[62] Ibid
[63] Victor Pickard, "Democracy without Journalism." Page 3.
[64] Victor Pickard, "Democracy without Journalism", page 40.
[65] ibid
[66] Victor Pickard, "A Social Democratic Vision of Media: Toward a Radical Pre-History of Public Broadcasting," *Journal of Radio and Audio Media*, 2017.
[67] Rodney Benson, Matthew Powers, and Timothy Neff, "Public Media Autonomy and Accountability: Best and Worst Policy Practices in 12 Leading Democracies," *International Journal of Communication*, 2017.
[68] Benson et al, "Public Media Autonomy," 2017

**Figure 2**




Source: Data sourced from Rodney Benson, Matthew Powers, and Timothy Neff, "Public Media Autonomy and Accountability: Best and Worst Policy Practices in 12 Leading Democracies," *International Journal of Communication*, 2017; created using ggplot2.

One of the prime examples that Benson et al detail is a series created and aired by PBS against public pensions, funded by a wealthy donor who was lobbying to have public pension systems dismantled.[69] They write that the Public Broadcasting Act of 1967 created Corporation for Public Broadcasting (CPB), which has the broad objective of "facilitating programs of 'high quality, diversity, creativity, excellence, and innovation,'" though they note that the CPB has little means at their disposal to fulfill this goal.[70] As a dearth of local reporting emerged, an abundance of online social media grew.

The FCC attempted to address the issue of changing news structures with their report, "Information Needs of Communities." The report, released in 2011, notes that despite the abundance of new media technologies, the U.S. was experiencing a "media deficit."[71] They note that while more news is being produced, they found that the news produced, "offered less in-depth coverage of critical topics," and that many news sources were not, "investing in more

[69] Ibid
[70] Ibid
[71] Steven Waldman, "The Information Needs of Communities," *FCC*, 2011.

reporting on critical local issues."[72] In the report, the FCC also noted what regulations it has used in the past to regulate broadcasting. The FCC required in 1940 that broadcasting stations, "must agree not to editorialize,"[73] This eventually led to the adoption of the Fairness Doctrine which required that broadcasters, "provide coverage of vitally important controversial issues of interest in the community," and that they, "afford a reasonable opportunity for the presentation of contrasting viewpoints." While the Supreme Court ruled that the Fairness Doctrine was constitutional in 1969, it was abolished in the 1980s.[74] Laura K. Smith of the St. Edwards University wrote in "Consolidation and News Content: How Broadcast Ownership Policy Impacts Local Television News and the Public Interest," that the FCC has used two approaches in its regulatory history. The FCC, "has restricted certain kinds of content that it deems harmful or inappropriate" and "required certain kinds of content in hopes of service the civic needs."[75] The FCC reported on the new media brought on by the Internet, mentioning that users were already spending far more time on sites like Facebook than they had on newspapers.[76] And yet, it is a testament to the newness of the recent resurgence of false information, that misinformation was only mentioned twice in the FCC report, neither reference mentioning social media platforms, but only in passing as a minor problem that some entities were trying to solve.[77]

Modern misinformation seems to have crept into the modern era slowly. During the 2004 Presidential campaign, candidate John Kerry accused President George W. Bush of waging a campaign of "mass deception."[78] While some point to this as the first moment of modern misinformation, it's full start began in earnest in 2008 with the emergence of the "birther"

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[72] Ibid.
[73] Steven Waldman, "The Information Needs of Communities," *FCC*, 2011.
[74] Ibid.
[75] Laura K. Smith, "Consolidation and News Content: How BroadCast Ownership Policy Impacts Local Television News and the Public Interests," *Association for Education in Journalism and Mass Communication*, 2009
[76] Steven Waldman, "The Information Needs," 2011.
[77] Ibid
[78] Mark Follman, "Weapon of mass deception," *Salon.com*, October 9, 2004.

movement, which alleged that the Presidential Candidate Barack Obama was not born in the United States. The "birther" faction started as a outcropping of the Tea Party Movement,[79] and it was not until 2011 when President Obama released his full birth certificate that the majority of Republicans began distancing themselves from the "birther" movement.[80] Even after the certificate was released, there were some that clung to the conspiracy, even as the 2016 began election began.[81]

The birther conspiracy was only a hint of what was to come. With the Jade Helm 15 misinformation influence deemed a success, the Russian's undertook a full-fledged campaign to influence the 2016 Presidential Election. This ushered in waves of misinformation throughout the election season. Both foreign and domestic instances of misinformation were rampant. One oft cited example is a conspiracy known as "pizzagate." The incident involved an Internet conspiracy theory, propagated by sites that some believe are Russian "sock puppets," such as YourNewsWire.com,[82] and right leaning media sites such as InfoWars, which republished and spread misinformation directly from Russian media sources.[83] The conspiracy alleged that Hillary Clinton and other influential leaders of the Democratic Party had engaged in child-sex-trafficking through an often-frequented pizza place in Washington D.C. known as Comet Pizza.[84] Benkler et al trace the misinformation surrounding the "pizzagate" conspiracy to multiple Russian linked sources, though they note that Russians were not the only progenitors of the conspiracy. The full conspiracy brewed together online. Benkler et al, along with Kathleen Hall Jamieson, noted that the tangential conspiracy theories could never have culminated in the "pizzagate" conspiracy, and the subsequent shooting in the restaurant by an individual who believed them,

[79] Benjamin R. Warner and Ryan Neville-Shepard, "Echoes of a Conspiracy: Birthers, Truthers, and the Cultivation of Extremism," *Communications Quarterly*, March 2014
[80] Ibid
[81] Amy Davidson Sorkin, "Trump is Still Lying About Birtherism," *The New Yorker*, September 20, 2016.
[82] Benkler et al, "Network Propoganda," 2018, pg 95.
[83] Benkler et al, "Network Propoganda," 2018, pg 244.
[84] Amy Davidson Sorkin, "The Age of Donald Trump and Pizzagate," *The New Yorker*, December 5, 2016.

had the Russians not hacked the DNC and released private emails through WikiLeaks.[85] As mentioned above, Jamieson argued that the hacking of the DNC, and the subsequent information manipulation had an effect on swing voters in key states.[86]

After the election, many in the United States, and around the world, proposed and implemented measures meant to prevent another successful information manipulation attempt. The United Kingdom, led by then Prime Minster Theresa May, stated that the National Security Communications Team would be expanded to include in their mission the task of deterring state actors and foreign adversaries from spreading disinformation.[87] Similar task forces were implemented in Australia, Canada, and Denmark.[88] Right-wing media websites such as the Drudge Report and The Washington Times reported on the

Many other countries have decided that misinformation is indeed a problem that requires a policy response. Germany---. Some countries in Africa such as Uganda and Kenya have implemented a tax on social media sites in an attempt to curb "gossip."[89]

In 2018, the European Union (EU) brought together experts on the topic of misinformation to create a plan to combat the spread of false news. Some of the solutions proposed in the first meeting were, "increasing transparency of financial interests, collaborating more with research, fostering media literacy, extending news rating services, reducing spam, or additional regulation."[90] Transparency of financial interests manifested through requiring transparency of political advertisements. Australia, Canada, France, and Germany all

[85] Jamieson, "Cyberwar," 2018.
[86] Ibid.
[87] Ruth Levush, "Government Responses to Disinformation on Social Media Platforms: Comparative Summary," Law Library of Congress, *Library of Congress*, 2019, updated July 24, 2020.
[88] Ibid
[89] von Lab Team, "The Consequences of Social Media Ta xes on the Digital Divide," *Better Place Lab*, better-place-lab.org, March 2020.
[90] "Minutes of the First Meeting of the High-Level Expert Group on Fake News," *European Commission,* European Union, January 18, 2018.

implemented some form of political ad finance reporting for political content online.[91] In the fall of 2017, the Honest Ads Act was introduced in the Senate, which would require and expansion of disclosure requirements for Internet advertisement.[92]

A number of countries have required social media companies such as Facebook and Twitter to more heavily regulate speech on their platforms. The EU created a framework for cooperation, with agreements between governments and platforms detailing the flagging and removing of posts.[93] Ruth Levush, a foreign law specialist with the Library of Congress noted that Facebook, Google, Twitter, and Mozilla all signed a EU Code of Practice on Disinformation.[94] In the United States it seems that the "soft self-regulation" form of regulating speech on these social media platforms has continued for now. There has been some discussion however among lawmakers on the removal or reform of Section 230 of the Communications Decency Act, which protects social media platforms from being held responsible for the content posted on their sites by users.[95] Senator Josh Hawley [R-MO] introduced the Ending Support for Internet Censorship Act in 2019[96] while Senators Roger Wicker [R-MS], Lindsey Graham [R-SC], and Marsha Blackburn [R-TN] introduced the Online Freedom and Viewpoint Diversity Act in 2020, both aimed at altering Section 230.[97]

Sanctions have also been proposed as a means to deter foreign election interference. Denmark passed a 2019 law criminalizing the act of spreading disinformation meant to benefit a foreign entity, while severe penalties are levied in Egypt and the United Arab Emirates for

[91] Levush, "Government Responses to Disinformation," 2020
[92] "Honest Ads Act," S.1989 – 115th Congress, 2017.
[93] Levush, "Government Responses to Disinformation," 2020.
[94] Ibid.
[95] Derek E. Bambauer, "Trump's Section 230 reform is repudiation in disguise," *Brookings Institute*, October 8, 2020.
[96] "Ending Support for Internet Censorship Act," S.1914 – 116th Congress, 2019.
[97] Russell Brandom and Makena Kelly, "Trump calls for last-minute 230 repeal as part of defense spending bill," *The Verge*, 2020.

spreading misinformation that is proven to be against the countries interests.[98] In the United States, two laws have been proposed involving sanctions. In a confusing turn, both were called DETER. The first is the Defending Elections from Threats by Establishing Redlines Act, which aims to implement economic sanctions against Russian agents spreading misinformation to influence elections.[99] The second, titled Defending Elections against Trolls from Enemy Regimes Act, which aims singularly to prevent foreign agents who participate in election interference from entering the United States.[100] The latter DETER Act passed the Senate, while the former has been introduced twice, though it has not made it out of committee.

## IV. Policy Proposal

The policy proposed herein is the Defending Elections from Threats by Establishing Redlines Act (DETER). As mentioned above, DETER was originally introduced in the Senate in 2018, and then again in 2019. The goal of this policy simply put is to, "deter foreign interference in United States elections."[101] The DETER Act attempts to dissuade foreign governments, specifically the Russian Federation, from attempting to interfere in a United States election by imposing financial burdens on those foreign governments and their institutions that choose to interfere in U.S. elections. A more quantifiable goal of DETER would be to see the number of reports made by the Department of National Intelligence (DNI) that identify an attempt by a foreign government to influence an election, decrease as the deterrence goes into effect. Furthermore, if the deterrence is successful, the number of incidences in which sanctions are issued in response to interference should be lower than if the deterrence is unsuccessful.[102]

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[98] Levush, "Government Responses to Disinformation," 2020.
[99] "Defending Elections from Threats by Establishing Redlines," S.1060 – 116th Congress, 2019
[100] "Defending Elections against Trolls from Enemy Regimes Act," S. 1328 – 116th Congress, 2019.
[101] [101] "Defending Elections from Threats by Establishing Redlines," S.1060 – 116th Congress, 2019.
[102] Ibid

Title I of the DETER Act sets a deadline of 60 days after an election, for the Director of National Intelligence (DNI), consulting with the Directors of the National Security Agency, the Central Intelligence Agency, and the Federal Bureau of Investigation, and the Secretaries of State, Treasury, and Homeland Security, and the Attorney General, to submit a report to congress and the president detailing, "with a high level of confidence whether or not the government of a foreign country, or any foreign person acting as an agent of or on behalf of that government, knowingly engaged in interference in the election."[103] This report can be supplemented with additional intelligence if new findings require that the original report needs to be updated. If the report does indeed determine that there was foreign election interference, and if that interference was carried out by the Russian Government, or on their behalf of the Russian Government, then the report must include a list of all senior political figures and other high ranking Russian individuals. Title I also amends the Countering America's Adversaries Through Sanctions Act by adding a new subsection that states that the Secretary of the Treasury will submit within a year of the passage of DETER, a report on the finances of the various Russian Federation officials.[104]

Title II of the DETER Act first requires that the President submit a report twice a year to the proper congressional committees on the finances of Russian oligarchs and high-ranking Russian Federation individuals. The second section of Title II requires that, in the case of the DNI report finding that the Russian Federation or any agent acting on the behalf of the Russian Federation did in fact interfere in an election in the U.S., the president will then impose financial sanctions on the perpetrators. These include: (1) blocking assets of Russian institutions such as Russian Banks, Russian Energy companies, Russian Defense and Intelligence sectors, and other Russian, State-owned entities; (2) Prohibit all transactions inside the United States made by

[103] Ibid
[104] Ibid

individuals in debt to the Government of the Russian Federation, or in debt to any entity owned or controlled by the Russian Federation; (3) block any high ranking Russian Federation individuals from transactions dealing with property or interests in the United States; and (4) deny visa to those same high ranking individuals.[105] The third section of Title II adds the DETER Act to the list of sanctions that have congressional oversight in section 216 of the Countering America's Adversaries Through Sanctions Act.[106]

**Table 1.** Sanctions in the DETER Act

| | |
|---|---|
| **Sanctions against Russian Federation Financial institutions** | |
| **1** | Block assets of Russian institutions such as Russian banks and Russian energy companies |
| **2** | Prohibit the any new investment made in the United States in any energy company owned by the Russian Federation. |
| **3** | Block assets of Russian defense and intelligence sectors |
| **Sanctions against Russian Individuals** | |
| **1** | Prohibit all transactions involving the identified individual, if they concern property or interests within the united states, property or interests that will come into the united States, or involve property or interests currently possessed by a United States individual. |
| **2** | Prohibit all transactions inside the United States made by individuals in debt to the Government of the Russian Federation, or in debt to any entity owned or controlled by the Russian Federation. |
| **2** | Deny visa to, and exclude from the United States. |

Title III states that after the passage of the DETER Act, in 90 day intervals, the President is required to report to the appropriate congressional committees on any attempts by a governmental or organization body other than Russia to interfere in an election in the U.S. The second section of Title III also requires that the President or his designee will report to Congress on potential strategies, sanctions, actions, and plans, the President intends to pursue to deter interference from the People's Republic of China, the Democratic People's Republic of Korea,

[105] "Defending Elections from Threats by Establishing Redlines," S.1060 – 116th Congress, 2019
[106] Ibid

the Islamic Republic of Iran, and any other foreign entity determined by the President to likely engage in election interference.[107]

**Authorization**

The DETER Act itself will be authorized by the legislative process. DETER also utilizes authorization from other sources. The Countering Russian Influence in Europe and Eurasia Act of 2017, section 201 of Public Law 115-44, defines who falls under the designation of a foreign political figure or oligarch in the Russian Federation. This is used to create the official list of the high-ranking Russian Federation, individuals within the reports submitted by the President and the DNI. The DETER Act also utilizes the authorization of congressional oversight from the Countering America's Adversaries Through Sanctions Act. The Securities Act of 1933 and the Securities Exchange Act of 1934 provides the authorizing definitions for the financial assets to be blocked from interacting with American interests.[108] The authority to deny entry to the United States, one of the sanctions listed in the DETER act, comes from the Immigration and Nationality Act.[109]

The specific authorization for the Secretary of the Treasury to impose the specific financial sanctions is found in the International Emergency Economic Powers Act (IEEPA). The IEEPA grants authority to the President to direct the Secretary of the Treasury to exercise the sanction powers to block and prohibit all transactions and dealings between American interests and Russian Federation interests, if those American interests are within the United States, are going to come in to the United States, or are controlled by a United States individual.[110]

**Implementation**

[107] Ibid
[108] "Defending Elections from Threats by Establishing Redlines," S.1060 – 116th Congress, 2019
[109] Ibid
[110] "Defending Elections from Threats by Establishing Redlines," S.1060 – 116th Congress, 2019

Implementation for this policy would begin with the President and the Director of National Intelligence. Their offices would be responsible for the administrative burden of creating and presenting the reports that would dictate whether the economic sanctions should be imposed. The main policy tool for achieving the goal of deterring foreign election interference would be the economic sanctions, which would be implemented by the Secretary of the Treasury at the direction of the President and overseen by Congress, if required by the DNI report.[111]

## V. Policy Analysis

Although misinformation is a "wicked" problem and may only be mitigated, it may be possible to deter misinformation spread by foreign governments, which would otherwise attempt to influence U.S. elections. This section analyzes the proposed DETER act, asking how effective it is at tackling the goal of deterring election interference. First, by looking at similar sanctions in the United States, the proposed policy can be analyzed for any redundancy. A process analysis will then look at the reporting and sanctions individually to analyze the effectiveness of the policy. Third, a cost-benefit analysis will determine whether the policy is financially viable or if it creates too much of a financial burden. Lastly, the benefits will be weighed against the drawbacks of policy and summarized.

### Comparative Analysis

First, the DETER Act should be compared to similar sanctions to determine whether this new policy is redundant or not. The most similar policy to the DETER Act is Executive Order 13848 (EO), which President Donald Trump signed in the fall of 2018. While there are minor differences between the two policies, such as the length of time the DNI has after an election to submit their report, there are two major differences that add credence to the notion that the

[111] Ibid

policies are not duplicative. First, Daniel Mack of the Emery International Law Review notes that one of the main difference between the Executive Order and the DETER Act is that under the EO, the president can implement the policy at his own discretion, whereas the DETER Act requires mandatory sanctions, overseen by congress.[112] The second significant distinction is that the EO does not specifically address election misinformation, spread by a foreign entity. While the Executive Order does mention that the, "covert distribution of propaganda and disinformation, constitutes an unusual and extraordinary threat"[113] to the security of elections, it only provides the authorization for sanctions against a foreign entity that interferes in an election solely through election infrastructure.[114] Ed Stein of the Lawfare Institute noted this as well, stating that solely targeting election infrastructure, and defining it solely as the IT components of infrastructure, is a narrow view of election interference.[115] This has not stopped the Treasury Department, however, from issuing sanctions under the EO against a Ukrainian Parliament member for editing and disseminating falsified audiotapes of Presidential candidate Joe Biden.[116] While the two policies have differing goals, and target different activities, how agencies may implement the EOs in practice, may make the DETER Act redundant.

**Process Analysis**

This section will look at the DETER Act's processes to measure the effectiveness of the proposed policy. First, the administrative aspects of the DNI and the Executive Office will be reviewed, followed by an in depth look at the sanctions. The DNI and the Executive Office

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[112] Daniel Mack, "An Era of Foreign Political Interference: Impulsive, Overcompensation of Australia, and A Comparison of Legislative Schemes with the United States," *Emory International Law Review*, 2020.
[113] Executive Order 13848, "Executive Order on Imposing Certain Sanctions in the Event of Foreign Interference in a United States Election," September 12, 2018.
[114] Ibid
[115] Ed Stein, "What's in the Executive Order on Election Interference?" Lawfare Blog, September 19, 2018.
[116] Bruce Zagaris, "U.S. Brings Criminal Complaint and Imposes Sanctions against Russians for Election Interference," *International Enforcement Law Reporter*

routinely produce reports on the various topics, and past reports can provide an insight in to their effectiveness. First, for the reporting to be effective, it needs to be timely. There is some evidence that this time sensitivity can be met by reporting. During the 2020 Presidential Election, the DNI released a statement in July and again in August to educate the American people on foreign entities and their current attempts to influence the election.[117] Another example can be found in the previous presidential election. The DNI released a report 59 days after the 2016 election, detailing Russian election interference that took place. These give evidence to the notion that the reporting function of the DETER Act is indeed effective.

There is a body of research that shows that under certain circumstances, sanctions are effective. Research has shown that sanctions may be more effective if they are more severe, [118] if they are directed at individuals rather than a whole population,[119] and if they are targeted at a specific behavior.[120] Comparing the DETER Act sanctions to these criterion gives an indication that the policy is effective. Ed Stein of the LawFare Institute called the sanctions in the DETER Act, "extraordinarily severe," which suggests that they may be severe enough to be successful.[121] Furthermore, the DETER Act specifically targets individuals, though it does target financial institutions, and it explicitly is targeted toward the stated election interference activities. This suggests that the DETER Act would be successful.

**Cost-Benefit Analysis**

Finally, due to the economic nature of the sanctions within the proposed DETER Act, a cost-benefit analysis can provide a benchmark to which to measure the effectiveness of the

[117] William Evanina, "Election Threat Update for the American Public," Office of the Director of National Intelligence, August 7, 2020.
[118] Jen Mun Jeong and Dursun Peksen, "Domestic Institutional Constraints, Veto Players, and Sanction Effectiveness," *Journal of Conflict Resolution*, 2019.
[119] Ibid
[120] Tomas Biersteker, "Understanding Effectiveness of International Sanctions," *Values and Interests in Communication Between Russia and The West*, 2019.
[121] Stein, "The DETER Act," 2018.

policy against. First, the costs of the policy should be estimated. There are two sets of costs involved in the DETER Act, the cost of administering the policy, and the cost of implementing the economic sanctions. The cost of administering the policy, the costs involved in the reporting process, can be thought of as a fixed cost, in the sense that they follow the election cycles. If the DETER Act achieves is goal of deterring foreign election interference, then it follows that the costs associated with implementing the sanctions will not manifest. The sanctions must be balanced so that they are severe enough to deter the undesired activity, but not so severe that the economic fallout would harm the global economy as a whole. Because of these two different costs, associated with two different phases of the policy, two separate cost-benefit analyses must be used.

The first cost-benefit analysis focuses on the cost of administering the policy. The cost-benefit equation can be summarized as:

**Total Program Benefits – Total Program Costs = Net Present Value**

To start, the total program costs will be calculated. The main program administering costs stem from the reporting function. Having the Director of National Intelligence, and the Executive Office, review, compile, and report on election security may not severely add any new budgetary demands on both entities, but there may still be costs involved. The budget for the total United States Intelligence Community in 2020 was $85.8 billion, roughly two thirds of which was appropriated for the National Intelligence Program (NIP).[122] The bulk of the DNI assessment and reporting activities would fall under this budget. However, not all of this budget could reasonably be thought of as the cost of administering the program. Only a certain percentage of the budget can reasonably be used for the cost side of the equation. The Congressional Budget Office has not put forth a cost estimate for this, however, the Office of

[122] "U.S. Intelligence Community Budget," *Office of the Director of National Intelligence,* dni.gov.

Management and Budget (OMB) reported on the budgetary impact for Executive Order 13848, which has the same reporting functions as the DETER Act. The OMB determined that implementing the administrative aspects of the policy, the assessment and reporting activities, would "have a *de minimis* impact on mandatory and discretionary obligations and outlays, as well as on revenues to the Federal Government."[123] What this means in this context is that the administrative activities would add so little to the administrative costs of the agencies involved, that the amount is negligible. Because of this estimation, the cost side of the equation can be thought of as *approximately* zero.

Next, the program benefits will need to be calculated. Clearly, if the DETER Act is successful, elections, and the country, would benefit from being free of foreign influence. To quantify this in monetary terms, however, may be more difficult. Luckily, there are some concrete examples that can help narrow down the benefits.

In the case of the Syrian Electronic Army hacking the Twitter account of the Associated Press, sending out false messages that the President had been injured created a drop in the Dow Jones Industrial Average that equaled $136 billion.[124] This cost of $136 billion could be thought of as the benefit amount if the policy had deterred the initial spread of false news. Also, the University of Baltimore explored the financial costs of fake news in their report, "The Economic Cost of Bad Actors on the Internet." They reported that the largest stock market loss from misinformation was over $300 billion, whereas on an annual basis, fake news creates an annual loss of approximately $39 billion in stock market activity.[125] They estimated that the direct costs associated with the spread and consumption of misinformation during the 2020 Presidential

[123] Russ Vought, "Budgetary Impact Analysis for Executive Order Entitled "Imposing Certain Sanctions in the Event of For

[124] Carlin, "Dawn of the Code," 2018.

[125] "Economic Cost of Bad Actors on the Internet: Fake News 2019," CHEQ and University of Baltimore, 2019.

Election was $200 million.[126] However, the report does note that by adding indirect costs, such as the cost associated with correcting false assertions, not to mention the societal costs associated with a decrease in trust of institutions, that the cost is most likely far higher.[127] On the lower end of the costs associated with having to rectify false election information, though not an insignificant amount, Robert Mueller's report on the Russian interference of the 2016 Presidential Election cost $32 million.[128] These costs of misinformation can be thought of as the benefits amount, had the misinformation been averted.

Using a conservative estimate of $200 for the benefit of the DETER Act the equation can be updated with the costs and benefits as such:

**($200 million) – (≈0) = $200 million**

It can be seen that the benefits far outweigh the costs for implementing the DETER ACT, if the DETER Act is successful.

The second cost-benefit analysis will look at costs when sanctions are indeed imposed on the Russian Federation, in response to election interference. The program benefits will continue to be $200 million, with a caveat that this is a conservative estimate of only the direct benefits. The program costs will increase from *de minimis* to an amount that includes the economic cost of sanctions against the Russian Federation. Due to the global nature of the economy, the economic sanctions against Russia will undoubtedly affect U.S. markets to some degree. Russia was the 20th largest supplier of imports to the U.S. in 2019, totaling $22.3 billion, while the U.S. is only the 40th largest supplier of exports to Russia, totaling $5.8 billion.[129] In total, Russia is the 26th largest trade partner with the U.S., and the amount of trading equates to

[126] Ibid
[127] "Economic Cost of Bad Actors," 2019
[128] Ibid
[129] "U.S.-Russia Trade Facts," Office of the United States Trade Representative, 2019.

an estimated 66,000 jobs.[130] Targeting individuals will not have a drastic effect on the trade between the U.S. and Russia, but sanctions targeting institutions may. The largest industry affected may be energy, as it is the largest group of goods imported to the U.S. from Russia, listed as mineral fuels, which totaled $13 billion.[131] That the majority of lobbyists registered to lobby for or against the DETER Act are energy companies gives some credence to the notion that the energy sector may be impacted. The harms to the U.S. economy that this decrease in trade due to sanctions will impose may be difficult to calculate. If the mineral fuels disrupt other industries that rely on them, then a larger affect may be seen. However, if those mineral fuels can be acquired elsewhere, albeit at a higher original cost, then the affect is lessened. The cost of sanctions could be thought of as the difference between the $13 billion in mineral fuels that would have been purchased from the Russian Federation entity, and the amount that would be used to purchase those mineral fuels elsewhere. Similarly, the cost of the sanctions could be thought of as the decrease in exports to Russia that may arise from sanctions affecting those sectors. Iikka Korhonen of the Institute for Economies in Transition determined that western countries that imposed sanctions on certain Russian sectors indeed saw a decrease in their exports, and noted that it was this was the true cost of the sanctions.[132]

Using again a conservative estimate of $200 million for the benefits of the DETER Act the equation can be updated with the costs associated with a loss of export revenue. The equation can be updated as such:

**($200 million) – (≈$5.8 billion) = $5.6 billion**

It can be seen that the cost far outweigh the benefits for implementing the DETER ACT, if the DETER Act sanctions must be put in to place.

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[130] Ibid

[131] "U.S.-Russia Trade Facts," Office of the United States Trade Representative, 2019.

[132] Iikka Korhonen, "Sanctions and counter-sanctions – What are their economic effects in Russia and elsewhere," Bank of Finland policy brief, *Institute for Economies in Transition,* 2019.

From the comparative analysis, the process analysis, and the cost-benefit analysis, we can see the pros and cons of the DETER Act. Table 2 summaries the findings from the three analyses. It can be seen from Table 2 that the pros outweigh the negative aspects of the policy.

**Table 2.** Summary of DETER Act Policy Analysis Results

| **Pros** | |
|---|---|
| **1** | The Reporting aspect of the DETER Act is effective |
| **2** | The Sanctions seem to be severe enough and targeted enough to be successful |
| **3** | If the DETER Act is effective in deterring election interference, the benefits far outweigh the costs |
| **Cons** | |
| **2** | In practice, Executive Order 13848 may already be used to target the activity the DETER Act targets |
| **2** | Economic sanctions may adversely affect the Energy sector, causing costs to rise. |

## VI. Political Analysis

In this section, the policy will be approached through a political lens. This is to determine the political feasibility of having the DETER Act enacted. First, a favorability analysis will look at whether or not the American people are in favor of solving the problem of foreign misinformation at this time. Following that, a legislative evaluation will look at the steps needed in congress to enact DETER. This will include looking at which committees are involved, whether or not the policy is likely to pass the Senate and the House, and whether it is likely that the President will sign the DETER Act.

First, there seems to be ample evidence that the American people believe that misinformation is a serious problem that needs to be remedied. A Pew Research Center survey in early 2019 found that 82 percent of Americans found “made-up news and information” a “big

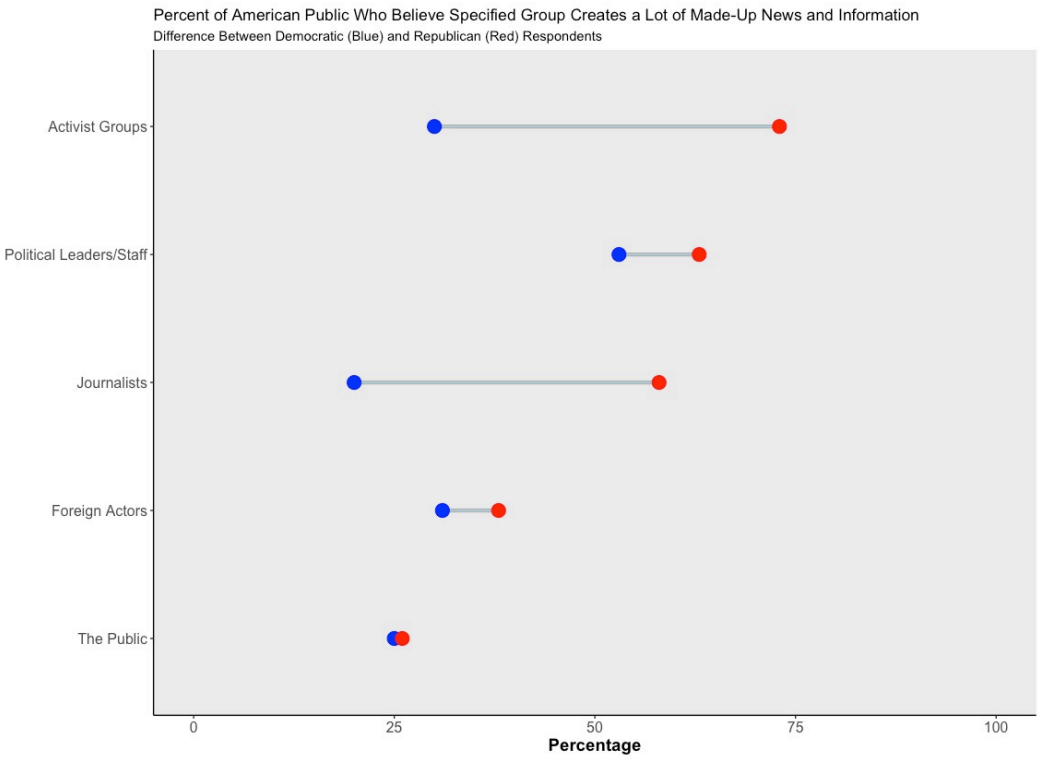
problem," and that roughly half of respondents found false information to be a larger problem than crime, climate change, racism, immigration reform, or terrorism.[133] Furthermore, the survey finds that close to 79 percent of adults in the United States believe that government action is needed to stem the tide of false information.[134] This is an increase of about 34 percent from 2016, in which only 45 percent thought that the government should do something about false news.[135] Additionally, a Gallup poll found that 73 percent of Americans believe that misinformation disseminated online is a serious problem.[136] From these polls, it seems evident that a significant percentage of the public would support legislature to combat misinformation. However, this public perception is solely on misinformation in general, not specifically that which is spread by foreign actors. The Pew Research Survey results from 2019 also shed some light specifically on this problem. The survey found that 35 percent of Americans believe that a lot of the misinformation being spread is created by "foreign-based individuals or groups" while 48 percent of respondents said some was spread by foreign entities.[137] More respondents stated that they believe activist groups and political leaders create a lot of misinformation.[138] Despite this it can still be surmised that a bill attempting to mitigate misinformation, in any form, would be received positively by a majority of Americans.

Because of the polarized nature of American politics, it is more difficult to pass legislative policy that is favored by one party and not the other. The survey results displayed in Figure 3 do seem to show that foreign created misinformation has a more similar salience to both Republican and Democratic respondents, whereas the other originators of false

[133] Amy Mitchell et al, "Many Americans Say Made-Up News Is a Critcal Problem That Needs to be Fixed," Pew Research Center, June 5, 2019.
[134] Ibid
[135] Michael Barthel, Amy Mitchell, and Jesse Holcomb, "Many Americans Believe Fake News Is Sowing Confusion," Pew Research Center, December 15, 2016.
[136] "American Views: Trust, Media, and Democracy," Knight Foundation, January 16, 2018.
[137] Mitchel, "Many Americans Say," 2019
[138] Ibid

information seem to have a wider difference in their importance to Republicans and Democrats.[139]

**Figure 3**




**Source:** Data sourced from Pew Research Center's American Trends Panel Wave 45, 2019; created using GGPLOT2.

Only "The Public" had a more similar importance to both parties, but that importance was relatively smaller than all other creators of misinformation.

In the Senate, the committee that has been assigned with reviewing the first and second iteration of the DETER Act has been the Committee on Banking, Housing, and Urban Affairs. This committee is chaired by Republican Senator Mike Crapo of Idaho and contains 13 Republicans and 12 Democrats. The bill was last introduced in the Senate in 2019 by Democratic Senator Chris Van Hollen of Maryland and cosponsored by six Republicans and six Democrats, including

[139] Amy Mitchell et al, "Many Americans Say Made-Up News Is a Critcal Problem That Needs to be Fixed," Pew Research Center, June 5, 2019.

Senator's Marco Rubio [R-FL] and Amy Klobuchar [D-MN].[140] Because of this, the bill has been touted as bipartisan.[141] There is some evidence that Senator Crapo is not inclined to have the bill move out of committee. In an article published by *The Hill*, Crapo is quoted stating that, "The mechanisms in this bill have been designed more to attack the Trump administration and Republicans than to attack the Russians."[142] However, fellow committee members Ben Sasse [R-NE], Martha McSally [R-AZ], and Mark R. Warner [D-VA], are all sponsors of the legislation.[143]

The DETER Act was also introduced in the House in September 2020, as a mirror of the Senate bill. It was introduced by Representative Brad Schneider [D-IL] and cosponsored by two Republican representatives, Brian Fitzpatrick [R-PA] and John Katko [D-NY], and Democratic Representative Brad Sherman [D-CA].[144]

There are eight entities that have officially registered to lobby for or against the DETER Act. Three of these lobbyists are energy companies that include BP, Exxon Mobil, and Chevron Corp. The American Petroleum Institute has also registered as a lobbyist. General Electric is also a lobbyist. Issue One, an organization created to advocate for political reform, also registered as a lobbyist on the DETER Act. One organization directly mentioned by the DETER Act, the Russian Federation Bank Sberbank, has also registered as a lobbyist, likely lobbying against the DETER Act.[145]

There is some indication to suggest that the bill would pass both the House and Senate. In fiscal year 2020, some aspects of the DETER Act were included in House of Representatives National Defense Authorization Act, and in the Senate, a resolution urging the National Defense Authorization Act to include the full DETER Act passed unanimously, though those provisions

[140] "Defending Elections from Threats by Establishing Redlines," S.1060 – 116th Congress, 2019
[141] Chris Van Hollen, "Van Hollen, Russia Experts Discuss the Deter Act," Press Release, September 6, 2018.
[142] Jordain Carney, "GOP Senator Blocks Bill Aimed at Preventing Russia Election Meddling," *The Hill*, December, 2019.
[143] Mitchel, "Many Americans Say," 2019
[144] Brad Schneider, "Schneider Reintroduces Bipartisan Legislation to Hold Putin Accountable for Election Interference," Press Release, September 30, 2020.
[145] Bill Profile: S. 1060, "Clients Lobbying on S. 1060," OpenSecrets.org, Accessed November 16, 2020.

were dropped during the conference.[146] Senate Minority Leader Chuck Schumer stated that if the bill were brought to a vote in the Senate, he believed it would pass unanimously.[147] While President Donald Trump has signaled with his Executive Order 13848, and has repeatedly railed against "fake news,"[148] he may not be receptive a law that limits his maneuverability in regards to foreign policy with Russia.[149] However, a new incoming administration may be more receptive to signing such bills in to law. Taking the political analysis as a whole, Table 3 summarizes the political benefits and costs associated with the proposed DETER Act.

**Table 3.** Summary of DETER Act Political Analysis Results

| **Pros** | |
|---|---|
| **1** | Public opinion is in support of tackling this problem |
| **2** | There is some bipartisan agreement on the policy |
| **3** | Likely to pass the House and Senate |
| **Cons** | |
| **2** | Chair of committee overseeing the policy is not in favor of the policy. |
| **2** | Economic lobbyists may not be in favor of the policy due to economic interests. |

## VII. Recommendation

With the world being more interconnected, and with the advent of AI technologies enabling further individualized targeting, misinformation spread by foreign actors in the attempt to influence the outcome of U.S. elections will increase. The electoral process is the bedrock of democratic participation in the United States, and as such, interference in that process must be deterred. While the DETER Act may be interpreted as similar in practice to the Executive Order

[146] Douglas Clark, "Senators Rubio, Van Hollen call for passage of DETER Act," *Homeland Preparedness News*, July 1, 2020.
[147] Jordain Carney, "GOP Senator Blocks Bill Aimed at Preventing Russia Election Meddling," *The Hill*, December, 2019.
[148] Scott Shane, Adam Goldman, and Matthew Rosenberg, "Trump Received Unsubstantiated Report That Russia Had Damaging Information About Him," *New York Times*, Jan 10, 2017.
[149] Jeff Kupfer, "Congressional Moves to Deter Election Meddling Could Misfire," *Axois*, October 1, 2018.

13848 that President Donald Trump issued in 2018, other administrations may use the strict definitions of influence, namely on election "infrastructure," to use their own discretion to decide not to issue sanctions specifically for misinformation interference. Because of this, the recommendation of this memorandum is to attempt to bring the DETER Act to a vote in the Senate Committee on Banking, Housing, and Urban Affairs in the 117th Congress.

The DETER Act is likely to pass both the House and Senate, and the incoming administration is likely to sign the legislature.[150] The Act will also be favored positively be a majority of Americans, and will bring a much needed air of bipartisanship to the 117th Congress. From the cost-benefit analysis it can be seen that if successful in achieving its goal, the benefits of the DETER Act far outweigh its costs. If sanctions are imposed, and the U.S. economy is affected adversely, the costs may outweigh the monetary benefits. However, the non-monetary benefits of having trust in the electrical process may offset that cost drastically.

That the sanctions are harmful enough that they may impose costs on the U.S. economy speaks to their severity, though clearly the brunt of that severity is levied on the Russian Federation. For a deterrent to work the threat of retaliation should be credible. Thomas Schelling, an early proponent of deterrence as a policy, wrote that, "one must threaten that he will act, not that he may act."[151] The notion of automatic, severe sanctions, directly targeted to specified individuals and institutions should be effective enough to target foreign misinformation.

Even though misinformation, specifically originating from foreign entities, is a "wicked problem," the proposed DETER Act will help lessen this false information. While it may not be possible to solve misinformation in its entirety, it goes a long way to mitigate the problem.

[150] Grace Panetta, "Biden Promises Russia will 'pay a price' for election meddling while Trump rails against his own FBI director," *Business Insider*, September 17, 2020
[151] Stein, "The DETER Act," 2018.

Because of this the policy would be effective. Ed Stein notes that for the Russian Federation to undertake another comprehensive influence campaign against a U.S. election would "require Russia's willingness to accept heavy, long lasting consequences."[152]

[152] Stein, "The DETER Act," 2018.

## Curriculum Vitae

Matthew A. Ellis graduated with a bachelor's degree in History from Aquinas College in 2015. Since then, he has worked as an Archivist for the City of Grand Rapids, MI, where he oversees records related policies and activities. Two of his most impactful achievements while with the City were implementing a digital repository of records for citizens to review online and implementing a data management system utilizing data dashboards. Matthew also as a member of the Grand Rapids Clerk's Office during elections. He has served on the Board of the Grand Rapids Historical Society, on the Board of the Greater Grand Rapids Women's History Council as Treasurer and has served on the Society of American Archivists Committee on Public Policy.